IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 482 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAMNABEN KUNWARJI BAWAJI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 482 of 2000

MR RC JANI for Petitioner No. 1

Mr B D Desai, APP Respondent No. 1

MR MP PRAJAPATI for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 23/01/2002

ORAL JUDGEMENT

The present petitioner-original informant has

filed this Revision Application under Section 11 (4) of the Probation of Offenders' Act challenging the judgment and order recorded on 5.9.2000 by the learned Addl.Sessions Judge, Mehsana in Criminal Appeal No.16/2000 extending benefit of the provisions made in section 4 of the Probation of Offenders' Act, 1958 (for short, 'the Act').

2. The present respondent no.2 was convicted on 31.3.2000 by the learned Judicial Magistrate First Class, Vijapur in criminal case no.2046/93 for offence punishable under section 323 of IPC and was sentenced to suffer S.I. for six months. He was also directed to pay fine of Rs.500/-. In default of payment of fine, he was required to undergo further S.I. for 30 days. The said matter was carried in appeal being Criminal Appeal No.16/2000 wherein the learned Addl.Sessions Judge partly allowed the appeal and directed that the above benefit be extended to the contesting respondents. Feeling aggrieved by the judgment and order passed by the learned Addl. Sessions Judge, the petitioner-original informant has preferred this revision before this Court. The petitioner has contended in this revision application that the learned Addl.Sessions Judge had not called for the report of the Probation Officer for extending benefit provided in section 4(1) of the said Act, and therefore, the order of the learned Addl.Sessions Judge is illegal. It is, therefore, prayed that the present revision application be allowed and the aforesaid order of the learned Addl.Sessions Judge be quashed and set aside and the judgment and conviction order recorded by the learned Magistrate be restored.

3. On receiving the revision application, rule was issued and in response to the rule, Mr M P Prajapati, learned Advocate appeared on behalf of the contesting respondent-original accused person. Mr B D Desai, learned APP appears for the State.

I have heard the learned advocate for the petitioner and the learned APP for the State. Learned Advocate for the petitioner has argued at length that before extending benefit under section 4(1) of the Act, the learned Addl.Sessions Judge was obliged to call for and consider the report from the Probation Officers. That in the present case, such report was not called for and, therefore, the judgment and order passed by the learned Addl.Sessions Judge are illegal and, therefore, the revision application is required to be allowed and the said order is required to be quashed and set aside.

4. The provisions contained in section 4(1) and 4(2) of the said Act may be reproduced for ready reference as under:

> "When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period not exceeding three years, as the Court may direct, and in the meantime to keep the peace and be of good behaviour;
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> Provided that the Court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the Court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.
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> (2) Before making any order under sub-section (1), the Court shall take into consideration the report, if any, of the probation officer concerned in relation to the case."

Sub-section (2) of section 4 clearly states that before making an order under sub-section (1), the Court shall take into consideration the report, if any, of the Probation Officer concerned in relation to the case. On the basis of this provision, it has been argued that the learned Judge was obliged to call for report for his consideration. On a plain reading of section 4(2) of the Act, it is very clear that if there is any report received from the Probation Officer, it was an obligation on the part of the Court concerned to take the same into consideration. In my reading of sub-section (2) of section 4, the learned Judge was not obliged to call for report from the Probation Officer before extending the benefit of sub-section (1) of section 4 of the said Act.

5. If we go by the scheme of the said Act of 1958,

we can refer the provisions made in section 6 of the Act. Sub-section (2) of section 6 states that for the purpose of satisfying itself whether it would not be desirable to deal under section 3 or 4 with an offender referred to in sub-section (1), the Court shall call for a report from the Probation Officer and consider report, if any, and other information available to it relating to the character and physical and mental condition of the offender.

6. This clearly shows that when the Legislature wanted that it would be obligatory on the part of the Court to call for report, then the wording of the section would be quite different, as is found in sub-section (2) of section 6 of the Act.

7. Learned Advocate for the petitioner has contended that sub-section (2) of section 4 and sub-section (2) of section 6 of the said Act are pari materia. It is not possible to agree with the said contention and argument of the learned Advocate for the petitioner. As indicated above, there is no mention in sub-section (2) of section 4 of the Act that the court or learned Magistrate or learned Judge shall call for report. On the other hand, in sub-section (2) of section 6 of the Act, it is clearly mentioned that the Court shall call for the report from the Probation Officer. That means whenever the Magistrate finds it proper to call for report, it can call for the report. The legislature has clearly indicated the said intention by placing appropriate words in appropriate section. On considering sub-section (2) of section 4 of the Act as well as sub-section (2) of section 6 of the Act, it clearly transpires that while extending benefit of section 4(1), it was not obligatory on the part of the court concerned to call for report of the Probation Officer unlike the provision in sub-section (2) of section 6 of the said Act. In my reading of this provision, the learned Judge cannot be said to have committed illegality in extending benefit of sub-section (1) of section 4 of the said Act even without calling for the report from the Probation Officer. It is true that if the report is called for, the Court will have some material to have the antecedents with respect to the character of the offender and other background of the offender. Nevertheless, looking to the nature of the offence said to have been committed by the contesting respondent and looking to the fact that three other accused persons who were also charged along with the contesting respondent have been acquitted by the learned Magistrate from all offences in question, I find that

this is not a fit case wherein the Court should exercise its revisional powers under section 397 read with section 401 of the Cr.P.C. or under section 11 (4) of the Probation of Offenders' Act, 1958. It is to be considered that the offence in question is said to have taken place on 14.4.1993. The learned Magistrate convicted the present contesting respondent on 31.3.2000, the learned Judge extended the benefit of probation by order dated 5.9.2000. The contesting respondent was required to submit bail bond and personal recognition in a sum of Rs.2000/- for a period of one year under section 4(1) of the Act. That period has already expired. Having regard to the facts of the case, this is not a fit case wherein the Court should interfere with the order of the learned Sessions Judge. in exercise of revisional powers as indicated above.

8. For the foregoing reasons, I find no merit in the Revision application and, therefore, this Revision Application is ordered to be dismissed. Rule discharged.

23.1.2002 [D P Buch, J.]
msp